

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TRACY AYNES,

Plaintiff,

v.

KELLOG SALES COMPANY,

Defendants.

Case No. C07-05623 RBL

ORDER DENYING IN PART AND
GRANTING IN PART PLAINTIFF'S
MOTION TO COMPEL DISCOVERY

THIS MATTER is before the Court upon Plaintiff's Motion to Compel discovery from Defendant Kellogg. [Dkt. # 25]. For the reasons stated below, the Motion is DENIED IN PART and GRANTED IN PART. Plaintiff's request that the Defendant produce out-of-state witnesses for depositions in Seattle is DENIED AS MOOT because the parties expressed to the Court that they will be able to resolve this issue without the Court's action. Plaintiff's request for a protective order is DENIED.

I. Motion to Compel Discovery from Kellogg

Plaintiff filed her motion to compel on September 11, 2008. [Dkt. # 25]. Plaintiff asks the Court to compel Kellogg to produce (1) performance "score cards" for the Kellogg Snack Division nationwide; (2) identities of the Zone Managers nationwide for the Kellogg Snack Division; (3) EEO-1 forms for Kellogg Snack Divisions nationwide; (4) a more complete answer to RFP 14, which requests "any documents reflecting performance issues"; (5) documents reflecting complaints of discrimination or harassment for the Western Region; (6) out-of-state Kellogg agents for depositions in Seattle; and (7) documents pursuant to RFP 9 and 10 regarding nationwide demographic data for Kellogg. *Id.* Lastly, Plaintiff seeks an order prohibiting

1 Defendant Kellogg from contacting Plaintiff's current employer. *Id.* On September 16th, after Plaintiff filed
2 her motion to compel, Defendant Kellogg submitted its Fifth Supplemental Response to Plaintiff's First Set
3 of Discovery Requests. [Dkt. # 30, Plaintiff's Response, Exhibit 3].

4 Defendant indicated that its Fifth Supplemental Response to Plaintiff's Discovery Requests provides
5 the identities of Zone Managers nationwide, all EEO-1 reports, and complaints of discrimination and
6 harassment for the Western Region. [Dkt. # 29, Decl. Of Leigh Ann Tift, 2:10-12]. Kellogg argues that these
7 responses resolve the dispute over each item of discovery except (1) the "score cards," and (2) the production
8 of out-of-state witnesses. However, Plaintiff argues in her reply brief that Defendant's supplemental responses
9 do not adequately provide the information Plaintiff requests. [Dkt. # 32]. Thus, with the exception of
10 depositions, the Court will consider all items of discovery disputed in Plaintiff's Motion to Compel.

11 **A. Interrogatory 7: Identities of Zone Managers nationwide**

12 The Plaintiff requests that Kellogg fully respond to Interrogatory 7 by providing the identities of all
13 Zone Managers for Kellogg in the last ten years. This information is relevant to the Plaintiff's claim, and given
14 the relatively small number of Zone Managers nationwide, the request does not unduly burden the Defendant.
15 Plaintiff's Motion to Compel Answer to Interrogatory 7 is therefore GRANTED.

16 **B. RFP 7: Performance "Score Cards"**

17 Plaintiff requests that Kellogg produce performance "score cards" for Kellogg Zone Managers
18 nationwide. There is little likelihood that the production of "score cards" on a nationwide basis would result
19 in the discovery of any evidence relevant to either proving gender discrimination, or refuting Defendant's
20 asserted reason for firing Aynes. Defendant argues that Plaintiff's performance was compared by her managers
21 with the performance of Zone Managers in the Western Region only, and therefore such evidence from other
22 regions could not have affected her managers' decision to fire her. Even if Plaintiff's managers compared her
23 performance to the performance of Zone Managers nationwide, it does not appear that the Defendant disputes
24 the Plaintiff's performance figures. [Dkt. # 30, Decl. Leigh Ann Tift, 2]. In fact, Plaintiff has stated in her
25 deposition that she was recognized fairly for her sales. [Dkt. # 29, Exhibit 1]. Moreover, Plaintiff offers no
26 basis for supposing that an exceptional sales record tends to show that her termination was the result of gender
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1 discrimination or retaliation. Kellogg asserts that Plaintiff's unprofessional behavior, not her performance,
2 "caused her to be evaluated poorly, placed on a performance improvement program, and ultimately
3 terminated." [Dkt. # 30]. Thus, the performance figures of Zone Managers outside the Western Region are
4 not relevant to disproving Kellogg's assertion that Plaintiff was fired for her behavior, or that Defendant
5 engaged in gender discrimination. Plaintiff's Motion to Compel production of Kellogg "score cards"
6 nationwide is therefore DENIED.

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9 **C. RFP 14: Documents Reflecting Performance and Discipline Issues**

10 Plaintiff requests that Defendant produce notices of discipline or performance issues that Plaintiff's
11 managers provided to other employees under their supervision. [Dkt # 32, Plaintiff's Reply]. Plaintiff originally
12 requested that Kellogg produce any Performance Improvement Plans, as well as *any* documents reflecting any
13 employee performance issues from January, 2000, through the present. Plaintiff agreed, for the present
14 purposes, to limit RFP 14 to write-ups or other notices of discipline issued by the five managers responsible
15 for the Plaintiff. [Dkt. # 32, Plaintiff's Reply]. Defendant Kellogg has indicated that it has searched for
16 Performance Improvement Plans or records of formal discipline other than the Performance Improvement Plan
17 given to Plaintiff, and that no such records were found. [Dkt. # 30, Defendant's Opp., 5: 14-15]. If this is true,
18 it is sufficient that Defendant revise its answer to RFP 14 so that it reflects the absence of any formal discipline.
19 To require Defendant to produce any and all communications related to performance or discipline would
20 require the Defendant to engage in a costly, time consuming endeavor with little hope of producing any
21 material relevant to the Plaintiff's claim. The Court limits RFP 14 to any write-ups or notices of discipline
22 issued by Plaintiff's five managers. Plaintiff's Motion to Compel any documents reflecting performance and
23 discipline issues is therefore DENIED IN PART and GRANTED IN PART.

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27 **D. RFP 10: "Demographic Data"**

28 Plaintiff moves to compel production of information requested by RFP 9 and 10 (hereinafter

1 “demographic data”). [Dkt. # 26, Ex. 1, 8-9] . While Kellogg supplemented its answer to RFP 10 with EE0
2 documents pertaining to the Western Region, “demographic data” relating to Kellogg’s workforce composition
3 on a *nationwide* basis, as well as efforts to create a balance between gender or race in the workforce, are
4 relevant to Plaintiff’s gender discrimination claim. Plaintiff’s Motion to Compel “demographic data” pursuant
5 to RFP 9 and 10 is therefore GRANTED.

7 **E. RPF 18: Documents Relating to Any Complaints of Discrimination or Harassment**

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9 The Plaintiff requests any documents reflecting or relating to any complaints, allegations, or
10 observations of discrimination or harassment of Kellogg employees during the past ten years. The Plaintiff’s
11 request is overbroad and unduly burdensome to the Defendant. Kellogg must produce complaints of
12 harassment or discrimination from lawsuits and EEOC or Human Rights Commission charges for the Western
13 Region. However, the discovery is limited to any documents relating to complaints, allegations, or observation
14 of discrimination or harassment in the last five years. Plaintiff’s Motion to Compel production of such
15 documents is therefore GRANTED IN PART and DENIED IN PART.

17 **II. Plaintiff’s Request for a Protective Order**

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19 Plaintiff seeks a protective order preventing Defendant Kellogg from contacting Plaintiff’s current
20 employer “without giving Plaintiff the courtesy of an opportunity to object or move this court for an order.”
21 [Dkt # 32]. Under Rule 26(c) this Court may issue a protective order only if the movant has established good
22 cause, and has in good faith conferred or attempted to confer with other affected parties in an effort to resolve
23 the dispute without court action.” FRCP 26(c). The party seeking protection establishes good cause by
24 demonstrating that specific harm or prejudice will result if no protective order is granted. *See San Jose*
25 *Mercury News, Inc. v. United States Dist. Ct.*, 187 F.3d 1096, 1103 (9th Cir. 1999).

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27 In this case, Plaintiff argues that Kellogg may subpoena her current employer to “harass and intimidate
28 Plaintiff,” and that contact with her current employer would not lead to relevant or admissible evidence.”

1 While it is possible that Kellogg may contact Aynes's current employer with the purpose of intimidating
2 Plaintiff and harming her reputation, the Court expects Defendant's counsel to conduct themselves as officers
3 of the Court. If possible, Defendant's counsel should provide Plaintiff with the opportunity to seek a protective
4 order if specific discovery is directed to the Plaintiff's current employer. Because Defendant's counsel has not
5 yet contacted Plaintiff's current employer, and Plaintiff has not established a specific harm or prejudice,
6 Plaintiff's Motion for a protective order is DENIED.
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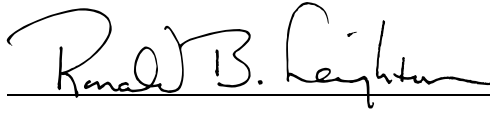
8 **IV. Conclusion**

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10 Plaintiff's Motion to Compel the production of out-of-state witnesses for depositions in Seattle is
11 DENIED AS MOOT. Plaintiff's Motion to Compel "demographic data" pursuant RFP 9 and 10, as well as
12 the identities of Zone Managers nationwide is GRANTED. Plaintiff's request that the Defendant produce
13 performance "score cards" for Zone Managers nationwide is DENIED. The Court limits RFP 14 to documents
14 reflecting employee performance and discipline issued by Plaintiff's managers, and Plaintiff's Motion to Compel
15 production of documents under RFP 14 is therefore DENIED IN PART and GRANTED IN PART.
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17 The Court limits RFP 18 to the production of documents relating to any complaints, allegations, or
18 observations of harassment of Kellogg employees during the past five years. Plaintiff's Motion to Compel
19 documents pursuant to RFP 18 is therefore DENIED IN PART and GRANTED IN PART. Lastly, Plaintiff's
20 Motion for a protective order is DENIED. Defendant must comply with all discovery requests no later than
21 20 days after the issuance of this order. The Court issues this order in the interest of expediency, and urges the
22 parties to resolve all future discovery disputes without the Court's action. The Defendant's request for costs
23 and fees is DENIED.
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1 IT IS SO ORDERED.

2 Dated this 30th day of September, 2008.
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7 RONALD B. LEIGHTON
8 UNITED STATES DISTRICT JUDGE
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